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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/476,618	12/31/1999	DAVID W KURZYNSKI	15-IS-5297(7	8075

7590

12/12/2005

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EXAMINER

LEROUX, ETIENNE PIERRE

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 12/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/476,618

Applicant(s)

KURZYNSKI ET AL.

Examiner

Etienne P LeRoux

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continued Examination

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/31/2005 has been entered.

Claim Status

Claims 48-53 are pending; claims 1-47 having been cancelled. Claims 48-53 are rejected as detailed below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 49 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 49 recites "wherein the third level only comprises open medical images related to open medical images from the first level." Claim 48 from which claim 49 depends recites "a first level comprising a currently viewed medical image." Obviously a currently viewed medical image on the first level must be an open image therefore, it is unclear how "the third level only comprises open medical images."

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Art Rejection Precluded

Claims 49 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Due to the indefiniteness of the claim, no art rejection is provided in this Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 48 and 50-52 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat No 5,734,915 issued to Roewer, hereafter Roewer.

Claims 48 and 52:

Roewer discloses opening:

a plurality of medical image files to display a plurality of medical images [Figs 4A-4C, col 3, lines 35-48, col 4, lines 35-50, window-oriented commands]

prioritizing the plurality of medical image files using a prioritization scheme having at least three levels including [col 5, lines 39-45, WYSIWYG, abstract, group of images]:

a first level comprising a currently viewed medical image [col 5, lines 39-45, WYSIWYG, abstract, group of images]:

a second level comprising medical images in a viewing stack [col 11, lines 45-50, col 15, lines 25-30, col 33, lines 30-35]

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a third level comprising medical images related to medical images with a higher priority [archive, col 5, line 41], wherein the medical images in the viewing stack and the medical images related to medical images with a higher priority are not currently viewed medical images

the medical images from the first level are designated with a higher priority than the medical images of the second level and the medical images of the second level are designated with a higher priority than the medical images of the third level [col 13, lines 35-45]

unloading from the memory of the workstation a medical image file having a lower priority than at least one of the open medical image files stored in memory, wherein the unloaded medical image file includes at least a portion of at least one of the open medical images [windowing per Apple Macintosh System 7, col 10, lines 58-63, col 15, lines 25-35]

Claim 50:

Roewer discloses the elements of claim 48 as noted above and furthermore, Roewer discloses further comprising the step of saving the visual display settings [frame record, col 17, lines 38-52] of the unloaded medical image file such that if the unloaded medical image file is not closed and a user decides to redisplay the unloaded image file, the unloaded medical image file appears virtually open to the user and as if the unloaded medical image file had not been unloaded [refresh Window redraws a PCW window with all its contents, col 13, lines 64-67].

Claim 51:

Roewer discloses the elements of claim 48 as noted above and furthermore, Roewer discloses wherein the unloaded open medical image file is transferred to a storage device connected to the workstation by a network [col 8, lines 15-33].

Response to Arguments

Applicant's arguments filed 8/31/2005 have been carefully considered but they are not persuasive.

Applicant Argues:

Applicant states in the second paragraph of page 6 "As stated within the Office Action, Roewer fails altogether to teach a prioritization scheme, wherein the second and third images are not currently viewed per claims 48 and 52."

Examiner Responds:

Examiner is not persuaded. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., wherein the second and third images are not currently viewed) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

However, Roewer discloses images in the queue and discloses images in archive as noted in the above Office Action. Such images read on the second level and the third level and obviously, such images are not open images.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P. LeRoux whose telephone number is (571) 272-4022. The examiner can normally be reached Monday through Friday between 8:00 am and 4:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Etienne LeRoux

12/7/2005

A handwritten signature in black ink, appearing to read 'Etienne LeRoux', is written over the printed name and date.